

O-02-2017

**AMENDED ORDINANCE**  
**OF THE MAYOR AND COUNCIL OF THE TOWN OF KENSINGTON AMENDING**  
**CHAPTER V, “HOUSING AND BUILDING REGULATIONS”, BY AMENDING ARTICLE 1,**  
**“BUILDING CODE”, BY ADDING SECTION 5-109, “FENCES, WALLS AND RETAINING**  
**WALLS”, AND ARTICLE 2, “HOUSING CODE”, BY REPEALING AND RE-ENACTING**  
**SECTION 5-201, “MONTGOMERY COUNTY HOUSING CODE ADOPTED”; ENACTING**  
**NEW SECTION 5-202, “MAINTENANCE OF STRUCTURES AND FIXTURES”; AND**  
**RENUMBERING SECTIONS 5-202, “NEW HOME WARRANTY AND BUILDER**  
**LICENSING” AND 5-203, “PARKING ON YARDS AND GREENSPACE”**

WHEREAS, pursuant to §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, the Mayor and Council of the Town of Kensington (hereinafter, the “Town”) have the power to pass such ordinances as it deems necessary to protect the health, safety and welfare of the citizens of the municipality and to prevent and remove nuisances; and

WHEREAS, pursuant to §5-211 of the Local Government Article, Annotated Code of Maryland, the Mayor and Council have the power to enact building regulations; and

WHEREAS, §20-509 of the Land Use Article authorizes the Mayor and Council to regulate the construction or repair of fences, walls, hedges, and similar barriers; and

WHEREAS, the Council has determined that it is in the public interest and necessary for the protection of the public health, safety, and welfare and the preservation, improvement, and protection of lands and improvements in the Town to shorten the time period for compliance, reorganize and modernize Chapter V, Article, Article 2 .

**Section 1.** NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the Mayor and Council of the Town of Kensington, Maryland that Chapter V, “Housing and Building Regulations”, Article 1 “Building Code”, Section 5-109, “Fences, Walls and Retaining Walls” be enacted as follows:

<b>CAPS</b>	: Indicate matter added to existing law.
<b>[Brackets]</b>	: Indicate matter deleted from law.
<b>Asterisks * * *</b>	: Indicate matter remaining unchanged in existing law but not set forth in Ordinance
<b>CAPS</b>	: Indicate matter added in amendment.
<b>[Brackets]</b>	: Indicate matter deleted in amendment.

**SECTION 5-109.**

**FENCES, WALLS AND RETAINING WALLS**

(A) ALL FENCES, WALLS AND RETAINING WALLS ARE REQUIRED TO BE PERMITTED IN ACCORDANCE WITH SECTIONS 5-101 AND 5-102 OF THIS CODE.

(B) THE MAXIMUM HEIGHT OF A FENCE, WALL OR RETAINING WALL WITHIN THE FRONT PLANE OF A RESIDENTIAL PROPERTY IS FOUR (4') FEET, EXCEPT AS FOLLOWS:

(1) THE HEIGHT OF A FENCE OR RETAINING WALL WITHIN THE FRONT PLANE OF A HOUSE MAY HAVE A MAXIMUM HEIGHT OF SIX (6') FEET SIX (6'') INCHES, IF THE RESIDENTIAL PROPERTY IS ABUTTING A COMMERCIAL OR MIXED-USE PROPERTY.

(C) THE FINISHED SIDE OF A FENCE MUST FACE OUTWARD WHEN CONSTRUCTED WITHIN THE FRONT PLANE OF A RESIDENTIAL PROPERTY, OR ON A CORNER LOT.

(D) A FENCE OR RETAINING WALL WILL BE CONSIDERED AN ACCESSORY STRUCTURE IF IT EXCEEDS SIX (6') FEET SIX (6'') INCHES AND SETBACKS WILL BE APPLIED TO THOSE STRUCTURES AS NECESSARY.

(E) AN APPLICATION FOR CONSTRUCTION OF A FENCE OR RETAINING WALL TO BE INSTALLED ON THE PROPERTY LINE MUST BE ACCOMPANIED BY A LETTER OF APPROVAL FROM THE [~~ADJACENT~~] PROPERTY OWNER(S) WHO SHARE THAT PROPERTY LINE.

(F) A FENCE OR WALL MAY NOT BE LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY.

(G) A FENCE, WALL OTHER THAN A RETAINING WALL, TERRACE, STRUCTURE, SHRUBBERY, HEDGE, PLANTING, OR OTHER VISUAL OBSTRUCTION ON A CORNER LOT IN A RESIDENTIAL ZONE MAY NOT EXCEED A MAXIMUM HEIGHT OF THREE (3) FEET ABOVE THE CURB LEVEL FOR A DISTANCE OF FIFTEEN (15) FEET FROM THE INTERSECTION OF THE FRONT AND SIDE STREET LINES.

(H) A FENCE OR WALL MUST NOT BE LOCATED WITHIN A UTILITY OR SIMILAR EASEMENT, OR REQUIRED DRAINAGE AREA, UNLESS APPROVED BY THE AGENCY WITH JURISDICTION OVER THE EASEMENT.

(I) AN APPLICANT MAY SEEK A VARIANCE FROM THIS SECTION WITHIN FIFTEEN (15) DAYS OF THE DATE OF DENIAL OF AN APPLICATION. A VARIANCE MAY BE GRANTED AFTER A HEARING WHEN THE COUNCIL FINDS THAT:

(1) STRICT APPLICATION OF THE TOWN REGULATIONS WOULD RESULT IN PECULIAR AND UNUSUAL PRACTICAL DIFFICULTIES TO, OR EXCEPTIONAL OR UNDUE HARDSHIP UPON, THE OWNER OF THE PROPERTY;

(2) THE VARIANCE IS THE MINIMUM REASONABLY NECESSARY TO OVERCOME ANY EXCEPTIONAL CONDITIONS; AND

(3) THE VARIANCE CAN BE GRANTED WITHOUT SUBSTANTIAL IMPAIRMENT OF THE INTENT, PURPOSE, AND INTEGRITY OF THIS ARTICLE

(J) CONTIGUOUS, CONFRONTING AND ABUTTING OWNERS MUST RECEIVE NOTICE OF THE VARIANCE APPLICATION PRIOR TO CONSIDERATION BY THE COUNCIL.

(K) A VIOLATION OF SECTION 5-109 (A) SHALL BE A CLASS A MUNICIPAL INFRACTION AND ALL OTHER VIOLATIONS SHALL BE A CLASS E MUNICIPAL INFRACTION. ANY PROPERTY OWNER CITED WITH A NOTICE OF VIOLATION OF SECTION 5-109 (A) SHALL HAVE ~~[FIVE]~~ THREE ~~[(5)]~~ (3) DAYS TO BRING THE PROPERTY INTO COMPLIANCE BEFORE A MUNICIPAL INFRACTION WILL ISSUE AND TEN (10) DAYS FOR ALL OTHER VIOLATIONS.

**Section 2.** **BE IT FURTHER ORDAINED AND ENACTED**, by the Mayor and Council of the Town of Kensington, Maryland that Chapter V, “Housing and Building Regulations”, Article 2 “Housing Code”, Section 5-201, “Montgomery County Housing Code Adopted” be repealed, re-enacted and amended to read as follows:

Section 5-201. Montgomery County Housing ~~[Code]~~ AND BUILDING MAINTENANCE STANDARDS Adopted

(a) Chapter[s] 26 ~~[and 55]~~ of the Montgomery County Code (~~[1984 Edition]~~), entitled “[~~Housing Standards~~] **HOUSING AND BUILDING MAINTENANCE STANDARDS**” ~~[and “Unsafe Buildings” respectively]~~, which sets minimum requirements for dwellings and provides for the inspection and condemnation of buildings by County officials, including any future amendments, revisions, or changes thereto, are hereby adopted and made part of this Code by reference, except as otherwise provided ~~[in this Code]~~ HEREIN.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) ~~[The Town hereby requests and authorizes]~~ Montgomery County IS HEREBY AUTHORIZED to enforce the provisions of this Section WITHIN THE CORPORATE BOUNDARIES OF THE TOWN.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 26 OF THE MONTGOMERY COUNTY CODE~~], and Section 26-11 of the Montgomery County Code which regulates hotels, boarding houses, rooming houses, and tourist homes].~~

(e) ~~[In addition to limitations imposed by Section 5-201 (a), all residential and non-residential structures, both primary and accessory, within the Town of Kensington must be free of~~  
~~\_\_\_\_\_ Rust~~  
~~\_\_\_\_\_ Graffiti~~  
~~\_\_\_\_\_ Broken glass~~  
~~\_\_\_\_\_ Boarded up windows~~

~~Which can be seen from another property or public right of way within the Town.~~

~~\_\_\_\_\_ No residential or non-residential structure within the Town of Kensington may have flaking or peeling exterior paint, or unprotected wood, that covers more than 10% of the surface of the structure.~~

(f) ~~All fences within the Town of Kensington must be structurally sound and maintained in good repair.~~

~~\_\_\_\_\_ (g) A violation of this Section shall be a Class D municipal infraction for commercial~~  
~~PROPERTIES- and a Class E municipal infraction for residential PROPERTIES, subject to the~~  
~~penalties prescribed in Chapter X of this Code or Ordinances. Any person cited [in] WITH A NOTICE~~  
~~OF violation of this [Code] SECTION shall have [60] 30 days to BRING THE PROPERTY INTO~~  
~~COMPLIANCE BEFORE A MUNICIPAL INFRACTION WILL ISSUE [remedy the situation before~~  
~~penalties are applied].~~

~~[The Mayor and Council may grant additional time for compliance following an appeal by someone cited under this Section.]~~

~~[(h)] (F)~~ A copy of Chapter~~[s]~~ 26 ~~[and 55]~~ of the Montgomery County Code shall be kept in the Town office and ~~[shall be]~~ made available during normal business hours.

**Section 3. BE IT FURTHER ORDAINED AND ENACTED**, by the Mayor and Council of the Town of Kensington, Maryland that Chapter V, “Housing and Building Regulations”, Article 2 “Housing Code”, Section 5-202, “Maintenance of Structures” be enacted to read as follows:

**SECTION 5-202 MAINTENANCE OF STRUCTURES AND FIXTURES**

- (A) ALL RESIDENTIAL AND NON-RESIDENTIAL STRUCTURES AND FIXTURES SHALL BE MAINTAINED BY THE OWNER AND OCCUPANT IN GOOD CONDITION.
- (B) ALL RESIDENTIAL AND NON-RESIDENTIAL STRUCTURES MUST BE MAINTAINED BY THE OWNER AND OCCUPANT FREE OF THE FOLLOWING:
  - 1. RUST
  - 2. GRAFFITI
  - 3. BROKEN GLASS

(C) NO RESIDENTIAL OR NON-RESIDENTIAL STRUCTURE MAY EXHIBIT FLAKING OR PEELING EXTERIOR PAINT, OR UNPROTECTED WOOD, WHICH COVERS MORE THAN TEN (10) PERCENT OF THE SURFACE AREA OF THE STRUCTURE.

(D) A VIOLATION OF THIS SECTION SHALL BE A CLASS D MUNICIPAL INFRACTION FOR COMMERCIAL PROPERTIES AND A CLASS E MUNICIPAL INFRACTION FOR RESIDENTIAL PROPERTIES AS SUBJECT TO THE PENALTIES PRESCRIBED IN CHAPTER X OF THIS CODE. ANY PERSON CITED WITH A NOTICE OF VIOLATION OF THIS SECTION SHALL HAVE 30 DAYS TO BRING THE PROPERTY INTO COMPLIANCE BEFORE A MUNICIPAL INFRACTION WILL ISSUE.

**Section 4.** BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the Town of Kensington, Maryland that Chapter V, “Housing and Building Regulations”, Article 2 “Housing Code”, Section 5-202, “New Home Warranty and Builder Licensing” be and hereby is repealed, reenacted and amended to read as follows:

| Section 5-20[2]3. New Home Warranty and Builder Licensing

(a) Chapter 31C of the Montgomery County Code (~~[1984 edition]~~ **2017 EDITION, AS AMENDED**) entitled “New Home Warranty and Builder Licensing” which sets minimum warranty requirements for new homes and requires builders of new homes to obtain licenses from the County, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 31C of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

**Section 5.** BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the Town of Kensington, Maryland that Chapter V, “Housing and Building Regulations”, Article 2 “Housing Code”, Section 5-203, “Parking on Yards and Greenspace” be and hereby is repealed, reenacted and amended to read as follows:

| Section 5-20[3]4. Parking on Yards and Greenspace

(a) Parking on Yards and Greenspace Prohibited – Parking of vehicles, including trailers, chassis and other vehicles designed for use on the road, in the front and side yards of residential

property shall be limited to surfaced parking areas, driveways, and designated parking structures such as garages and carports. Parking of vehicles on green space and yards in the front or side yards is prohibited. It is unlawful for any owner or occupant of the residence to allow any such vehicle to park on the front or side yard green spaces or yards. A violation of this section shall be a Class E municipal infraction subject to the penalties prescribed in Chapter X of this Code or Ordinances. Any person cited in violation of this Code shall have five days to remove any improperly parked vehicle after notification of violation.

(b) Exception – This section does not apply to parking of less than 24 hours duration that is related to a specific, not regularly occurring event, such as a social occasion or overflow parking for a religious service, or to temporary conditions, such as construction related parking.

**Section 6.** BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington that, upon formal introduction of this proposed Ordinance, the Clerk-Treasurer shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the Clerk-Treasurer. The proposed ordinance or a fair summary thereof together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council, shall be:

- a. Posted at the town hall by the next business day;
- b. Posted on the official town website;
- c. Sent to those persons listed on the official town email list /mail subscription service; and
- d. Published once prior to the public hearing in the town newsletter or sent by substitute regular mail to newsletter circulation addresses.

The public hearing shall be held at least fifteen (15) days after introduction and may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard. This Ordinance shall become effective on \_\_\_\_\_ provided that the ordinance or a fair summary thereof is:

- a. Posted at the town hall by the next business day for at least two (2) weeks;
- b. Posted on the official town website;

- c. Sent to those persons listed on the official town email list /mail subscription service; and
- d. Published once in the town newsletter.

**INTRODUCED** by the Mayor and Council of the Town of Kensington, Maryland at a public meeting assembled on the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**ADOPTED** by the Mayor and Council of the Town of Kensington, Maryland at a public meeting assembled on the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**EFFECTIVE** the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**TTEST:**

**TOWN OF KENSINGTON**

By: \_\_\_\_\_  
Susan Engels, Clerk-Treasurer

By: \_\_\_\_\_  
Tracey Furman, Mayor

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Suellen M. Ferguson, Town Attorney